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**SUPERFUND PROGRAM
MANAGEMENT BRANCH**

December 3, 1990

Jodi Traub, Acting Chief
Superfund Program Management Branch
U.S. Environmental Protection Agency
Region 5
230 South Dearborn Street
Chicago, IL 60604

RE: Great Lakes Asphalt, Zionsville, Indiana

Dear Ms. Traub:

The enclosed letter to Pioneer Metal Finishing was apparently inadvertently placed in a packet of information sent to PPG Industries, Inc.

If you have any questions, please feel free to call.

Sincerely,

Joseph M. Karas
Senior Attorney

JMK/tah



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

JAN 04 1991

REPLY TO ATTENTION OF:

Joseph M. Karas
PPG Industries, Inc.
One PPG Place
Pittsburgh, Pennsylvania 15272

RE: Great Lakes Asphalt, Zionville, Indiana
Site No. FL

Dear Mr. Karas:

I am in receipt of your letter of December 27, 1990 regarding the Great Lakes Asphalt Site in which you expressed your dismay that the United States Environmental Protection Agency ("U.S.EPA") was "re-opening" the de minimis settlement in U.S. v. American Waste Processing, et al. and U.S. v. United Technologies Automotive, Inc.. It was your position that the definition of Covered Matters in the de minimis consent decree would preclude your clients liability for the Great Lakes Asphalt Site. Further, you stated that the language in the Jeffboat Consent Decree is evidence of the intent of the parties.

Enclosed is a copy of language that was proposed for inclusion in the de minimis consent decree by the de minimis parties. As you will noted, in Section VI, it states:

Except as otherwise provided in Section VII below, the United States covenants not to sue the De Minimis Settling defendants with regard to "Covered Matters". For purposes of Section VI., "Covered Matters" shall refer to any liability that could be imposed upon any of them with respect to or in any way arising from the Site under Section 106 or 107 of CERCLA . . . and all other claims available under any state or federal statute or regulation or under common law (except as specifically exempted below), including without limitation, obligations or liability arising from off-site contamination which may have resulted from the disposal of waste material at the Site, obligations or liability arising from actions or omissions of the persons conducting or funding the remediation of the Site or their contractors, and obligations or liability arising from the Site by persons conducting or funding the remediation of the Site or their contractors and

placement or disposal of such wastes or contaminated materials at any other site.

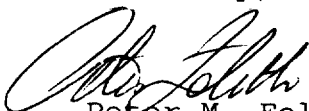
The underlined language was proposed for inclusion by the de minimis parties. However, it was rejected by the U.S. EPA and was not included in the consent decree. Thus, by its rejection of the above quoted language, it is evident that it was not the intent of the U.S. EPA to release the de minimis parties for any potential liability that they may have at the Great Lakes Asphalt Site. If you are aware of any U.S. EPA employee who represented to you or to any other de minimis party that the settlement was to include a release for the Great Lakes Asphalt Site, please provide me with this individual's name. Upon obtaining such information, I would be willing to reconsider your position. Absent such information, U.S. EPA's rejection of the above quoted language clearly demonstrates that the covenant not to sue in the de minimis consent decree was not intended to exclude potential liability for the Great Lakes Asphalt site.

In support of your position you also rely on the exclusion for covered matters that was contained in Jeffboat's covenant. However, as you noted, Jeffboat was not a de minimis party. As you are aware, settlement with a de minimis party is governed by a separate section of CERCLA. Your attempt to imply that an intent to release the de minimis parties is clear because U.S. EPA used more exacting language for a non-de minimis party as opposed to de minimis parties begs the questions of the scope of covered matters in the de minimis agreement. You are attempting to read a release by the absent of words rather than by an affirmative statement.

Based on the above information, it is the U.S. EPA's position that the de minimis consent decree does not exempt or preclude the settling de minimis parties from liability at the Great Lakes Asphalt Site. The position that your client will take is obviously a matter for your mutual decision and analysis. This letter is merely to inform you of U.S. EPA's position as to the claims raised in your letter.

If you have any further questions regarding the Great Lakes Asphalt Site, please feel free to contact me.

Sincerely,



Peter M. Felitti
Assistant Regional Counsel

Enclosure